



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/534,786

11/10/2005

Martin Richardson

03164.0184USWO

3626

23552 7590 08/21/2007  
MERCHANT & GOULD PC  
P.O. BOX 2903  
MINNEAPOLIS, MN 55402-0903

EXAMINER
----------

LEWIS, KIM M

ART UNIT	PAPER NUMBER
----------	--------------

3772

MAIL DATE	DELIVERY MODE
-----------	---------------

08/21/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/534,786

Applicant(s)

RICHARDSON, MARTIN

Examiner

Kim M. Lewis

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-20 is/are allowed.
- 6) ☒ Claim(s) 1-7, 14-17 is/are rejected.
- 7) ☒ Claim(s) 8-13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: Detailed Action.

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed on 6/5/07 has been received and made of record. As requested, claims 1, 8 and 17 have been amended and claims 18-20 have been added.
2. Claims 1-20 are pending in the instant application.

### ***Response to Arguments***

3. Applicant's arguments with respect to claim 1-4, 6, 7 and 14 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Objections***

4. Claim 1 is objected to because of the following informalities: Claim 1, lines 7 and 9, after "adjoining" insert --the--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3772

6. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5, 928,175 ("Tanaka").

As regards claim 1, Tanaka discloses a medical corset that covers the pelvic region of a user and which anticipates applicant's claimed invention. More specifically, Tanaka discloses a device (3) for bracing the pelvic region of a patient, the device comprising: a) a plurality of continuous straps (31-33) for wrapping around the pelvic region of a patient, the straps being arranged in a side-by-side relationship (Fig. 1) and interconnected to each adjacent strap at one or more points (via 322) to restrict relative movement of the straps at the or each point of interconnection, wherein when positioned on the patient, one of the straps may be an upper strap covering the upper pelvic region and adjoining the lower abdominal region of a patient and the other strap or one of the other straps may be a lower strap covering the lower pelvic region and adjoining the crutch region of the patient; and b) fastening means (311, 312, 323, 333, 334) for holding the straps wrapped around the pelvic region of the patient, whereby in use, the fastening means of the upper strap can be released to provide access to the lower abdominal region, or the fastening means of the lower strap can be released to provide access to the crutch region of the patient.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3772

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 2-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka.

As regards claims 2-3, the number of straps on the Tanaka device differs from the claimed number of straps. However, the examiner contends that it would have been obvious to one having ordinary skill in the art to add additional straps on the device of Tanaka in order to provided wider coverage of device on the user.

Furthermore, Applicant should also note that it has been held that the duplicating the components of a prior art device is a design within the skill of the art. *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

As regards claims 4-5, Tanaka does not disclose the recited dimensions or dimensional range of the straps. However, it has been held that a change in size of a prior art device is a design consideration within the skill of the art. *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

Art Unit: 3772

As regards claims 6-7, Tanaka discloses that the connecting material that in use, is wrapped around the pelvic region, (322) is constructed from cloth (col. 3, lines 56-59). Tanaka fails to teach the material is resiliently flexible. However, it has been held that the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. *In re Leshin*, 227 F. 2d, 125 USPQ 416 (CCPA 1960). Thus, it would have been obvious to one having ordinary skill in the art to provide a resiliently flexible cloth for the cloth of Tanaka since the straps are resiliently flexible. This will allow the straps to move with one another, thereby creating a more comfortable and conforming device.

10. Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka in view of U.S. Patent No. 4,580, 555 ("Coppess").

As regard claim 14, Tanaka fails to disclose the adjustable strap features as presently claimed. Coppess, however, discloses a pelvic support splint having straps with fastening means wherein the fastening means enable the length of each strap wrapped around the patient to be adjusted, thereby allowing the device to be fitted to patients of varying sizes and allowing pressure applied by each strap to the patient to be adjusted (note col. 3, lines 6-9, which discloses length adjustment). It would have been obvious to one having ordinary skill in the art to substitute the straps of Tanaka for the straps of Coppess because Coppess teaches straps having fastening means that enable

Art Unit: 3772

the length of each strap wrapped around the patient to be adjusted, thereby allowing the device to be fitted to patients of varying sizes and allowing pressure applied by each strap to the patient to be adjusted.

As regards claims 15-17, both Tanaka and Coppass fail to disclose the device according to claim 1, wherein on each strap the fastening means includes a first attachment means and a plurality of co-operating second attachment means spaced along the length of the strap which can be coupled together so that each strap can form a loop of varying sizes, the device according to claim 14, wherein the first attachment means is in the form of a flexible tab and that the second attachment means is in the form of one or more openings through which the tab can be threaded and fastened, and the device according to claim 15, wherein each tab includes sections of hook and loop fasteners and that the openings are rings projecting from the straps, whereby in use, the tab can be threaded through a ring and folded on itself so that the hook and loop fasteners engage. Instead, Coppass discloses straps with adjustable male and female attachment components. These attachment components are capable of being moved along the length of the strap in order to adjust the loop formed by the strap in order to form a loop of varying sizes. Since, the fastening means are equivalent because they perform the same function, it would have been obvious to one having ordinary skill in the art to substitute any equivalent fastening means such as hook and loop material, that performs the function of securing the straps about a user and adjusts the loop size. Furthermore, the limitations of

Art Unit: 3772

claim 16 and 17 would also have been obvious to one having ordinary skill in the art since they follow from use of hook and loop attachments.

***Allowable Subject Matter***

11. Claims 8-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Claims 18-20 are allowed.

***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

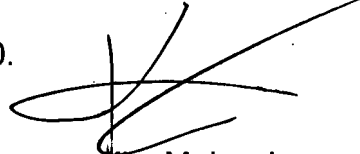


Art Unit: 3772

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (571) 272-4796. The examiner can normally be reached on Monday to Friday, from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco, can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kim M. Lewis  
Primary Examiner  
Art Unit 3772

kml  
August 17, 2007